

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-32-C – ORDER NO. 2007-763
NOVEMBER 13, 2007

IN RE: Application of Midwestern Telecommunications, Inc. for Designation as an Eligible Telecommunications Carrier for the Purposes of Receiving Federal Universal Service Support Pursuant to Section 214 (e) (2) of the Telecommunications Act of 1996) ORDER GRANTING) DESIGNATION AS) AN ELIGIBLE) TELECOMMUNICATIONS) CARRIER)
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This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Midwestern Telecommunications, Inc. (“MTI” or the “Company”) for designation as an Eligible Telecommunications Carrier (“ETC”) in certain areas of the State of South Carolina under the provisions of 47 U.S.C. § 214(e)(2) of the Federal Telecommunications Act (the “Federal Act”) and 47 C.F.R. §§ 54.401-54.417 (the “FCC’s Rules”). MTI filed its Application on January 19, 2007. MTI seeks ETC status in order to offer Lifeline and Link-Up support to its qualifying customers, and draw from the federal Universal Service Fund (“USF”) in connection with those services.

By letter, the Commission instructed MTI to publish, one time, prepared Notices of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notices of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. The Company complied with this instruction and provided the Commission with proof of publication of the Notices of Filing. A

Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”) on May 24, 2007. The South Carolina Office of Regulatory Staff (“ORS”) was a party pursuant to statute.

The public hearing was held on July 31, 2007 at 10:30 a.m. in the Commission’s Hearing Room, with the Honorable G. O’Neal Hamilton, Chairman, presiding. At the hearing, John J. Pringle, Jr., Esquire represented MTI. John Bowen, Esquire, and Margaret Fox, Esquire, represented the SCTC. C. Lessie Hammonds, Esquire, represented the ORS. MTI presented the Direct and Responsive Testimony of Ikechuku Chinwah. The ORS presented the Direct and Responsive testimony of James McDaniel.

BACKGROUND

MTI is a competitive local exchange carrier (“CLEC”) headquartered in Chicago Heights, Illinois and was authorized to provide local exchange services in South Carolina on March 12, 2003 via Order No. 2003-124 issued in Docket No. 2002-381-C. MTI is currently certified to provide local exchange services in 13 states.

The federal USF consists of four programs, each administered by the Universal Service Administrative Company (“USAC”): 1) financial support to carriers serving high-cost areas; 2) the E-rate program, which provides discounted services (local and long distance telephone service, Internet access, and internal connections to eligible schools and libraries; 3) assistance to low income customers (discounted installation and monthly telephone services); and 4) discounted services to rural health care providers.

MTI has made clear that it is not planning to seek high-cost universal service funding if it is designated as an ETC in South Carolina. Accordingly, MTI limits its requested USF support

to the federal USF low income support program, and certifies that all low income USF funding it receives will be used to subsidize rates for its Lifeline and Link-Up customers, consistent with 47 C.F.R. § 54.403.

MTI is currently designated as a low income support ETC in Alabama, Florida, Illinois, and Wisconsin, and is currently providing Lifeline/Link-Up services to over 3,000 customers in those states. MTI's ETC status is in good standing in the states where MTI has been so designated. MTI's witness further testified that its accounts with the Federal Communications Commission (FCC) and USAC are current. MTI is not aware of any outstanding complaints or violations with the FCC.

At the beginning of the hearing, MTI and the ORS submitted a Stipulation setting out a number of terms under which MTI agreed to operate should the Commission grant its ETC Application. The Stipulation between MTI and the ORS is attached hereto as Exhibit A and incorporated herein by reference.

As set out in the Stipulation, MTI has further agreed, in conformance with the South Carolina Lifeline program, to provide qualified customers with a total of \$13.50 in Lifeline assistance credits consisting of: \$6.50 in federal subscriber line charges; \$1.75 in federal support for states that have approved the credit, and \$1.75 which is a 50% match of federal support for having a state lifeline program requiring a \$3.50 credit under the South Carolina eligibility criteria.

ANALYSIS

A. Federal Statutory Requirements

In Section 214(e)(2) of the Federal Act, Congress authorized state commissions to designate a common carrier as an ETC if the carrier meets the requirements of Section 214(e)(1). Section 214(e)(1) provides:

(1) Eligible Telecommunications Carriers

A common carrier designated as an eligible telecommunications carrier under paragraph (2) , (3) , or (6) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received —

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

A telecommunications carrier may be designated as an ETC , and receive universal service support, so long as it offers, within a service area, the services that are supported by federal universal service support mechanisms under Section 254 (c) of the Act, and so long as it adequately advertises the availability of, and the charges for, such services. The Commission notes that MTI bears the burden of proving it has met each of the necessary elements required for ETC designation.

1. Service Area

Section 54.207 of the FCC's rules defines a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). For service areas served by a non-rural incumbent local exchange company ("ILEC"), there are no restrictions on how a Commission identifies a "service area" for purposes of designating a competitive ETC.

MTI proposes a service area consisting of each of the AT&T South Carolina wire centers in the Greenville and Charleston areas of South Carolina, as designated in Exhibit B hereto. No party opposes MTI's service area designation. MTI seeks designation solely for certain wire centers in AT&T's service territory. The Commission finds that MTI has met the service area requirement.

2. Required Service Offerings

The services to be supported by the USF under Section 254(a) are principally enumerated in Section 54.101(a) of the FCC's Rules, 47 CFR 54.101(a), as follows:

- (a) Voice grade access to the public switched network;
- (b) Local usage;
- (c) Dual tone multi -frequency signaling or its functional equivalent;
- (d) Single -party service or its functional equivalent;
- (e) Access to emergency services;
- (f) Access to operator services;
- (g) Access to interexchange service;
- (h) Access to directory assistance; and
- (i) Toll limitation for qualifying low-income consumers.

As set out in its Application and Testimony, MTI will offer all of the services enumerated above using facilities obtained from AT&T South Carolina by means of a commercial agreement. Accordingly, MTI satisfies the requirement set out in Section 214(e)(1)(B).

Additionally, FCC rules obligate an ETC to provide the low income support programs known as Lifeline and Link-Up and advertise the availability of those services in a manner reasonably designed to reach those likely to qualify for them. 47 C.F.R. §§ 54.405 and 54.411. No party provided evidence or argument in opposition to MTI's evidence regarding the foregoing supported services. Accordingly, the Commission finds that MTI offers and has the capability to provide each of the nine supported services in the areas for which it seeks ETC status.

3. Required Advertising

In addition to the service offerings required by Section 214(e)(1)(B) of the Federal Act, FCC rules (CFR Parts 54.405 and 54.411) provide that an ETC must also publicize the availability of Lifeline and Link-Up services "in a manner reasonably designed to reach those likely to qualify for the service." Lifeline and Link-Up are the programs MTI intends to support with ETC funding. MTI provided evidence showing that it will advertise the availability and terms of its services throughout its designated area (Chinwah Direct Testimony at Page 3, ll. 4-6; Exhibit A). Thus, MTI has shown that it will "advertise the availability of such services and the charges therefor using media of general distribution." No party challenged MTI's evidence. Therefore, the Commission concludes that MTI has demonstrated that it will publicize the availability of Lifeline and Link-up in a manner reasonably designed to reach those likely to qualify for the service, as directed by CFR §54.405 and 54.411.

B. The FCC's ETC Order

On March 17, 2005, the FCC issued its ETC Order, to clarify existing requirements and impose additional federal requirements that the FCC will use in evaluating future federal applications for ETC designation. The FCC described its additional guidelines, codified at 47 CFR §54.202, as “the minimum requirements” it would use in designating a carrier as an ETC, and urged that state commissions apply these guidelines in their evaluation of ETC applications properly before such commissions. However, the FCC did not obligate state commissions to employ the additional guidelines. ETC Order at paragraphs 58-64.

Generally speaking, the additional FCC guidelines require that an ETC applicant demonstrate: (1) a commitment and ability to provide services, including service to all customers within its proposed service area; (2) that it will remain functional in emergency situations; (3) that it will satisfy consumer protection and service quality standards; (4) that it offers local usage comparable to that offered by the ILEC; and (5) an understanding that it may be required to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to section 214(e)(4) of the Federal Act. Further, the FCC augmented its existing annual certification and reporting requirements, to further the FCC's goal of ensuring that ETCs provide supported services throughout their service territories. Moreover, the FCC expanded its view of the public interest requirement for additional ETCs.

Although the additional requirements in the ETC Order are not binding on the Commission, we will consider them in this proceeding.

1. Specific Additional FCC Performance Requirements

First, pursuant to the ETC Order, an ETC applicant shall commit to providing service

throughout its proposed designated service area to all customers making a reasonable request for service. 47 CFR §54.202(a)(1)(A).

MTI commits to providing service throughout its proposed ETC-designated service area to all customers. (Chinwah Direct Testimony at Pages 4-5). No party questions that commitment. Consequently, the Commission concludes that MTI supplied sufficient evidence demonstrating its present ability to provide service throughout its proposed ETC-designated service area to all customers who make a reasonable request for service.

The FCC also expects an applicant to demonstrate its ability to furnish services to all customers in the foreseeable future. Thus, an ETC applicant shall submit to the FCC a five-year plan describing, with specificity, proposed improvements or upgrades to the applicant's network on a wire-center -by-wire -center basis throughout its proposed designated service area. Because MTI seeks ETC designation solely for reimbursement of subsidized Lifeline and LinkUp services to eligible customers, the Commission agrees with MTI and the ORS and finds that submission of a Five -Year Network Improvement Plan is not required at this time. However, should MTI seek to receive high cost support, it shall abide by the multiyear network improvement plan requirement.

Second, the ETC Order obliges an applicant to demonstrate its ability to remain functional in emergency situations. MTI has provided testimony that it has the ability to do so. Because MTI leases facilities from AT&T to serve its customers, it has the same ability to remain functional in emergency situations as AT&T. No party disagrees. The Commission finds that MTI has met its burden on this issue.

Third, An ETC Applicant shall demonstrate that it will satisfy applicable consumer protection and service quality standards. 47 CFR §54.202(a)(3). MTI provided evidence that it

will satisfy applicable consumer protection and service quality standards. (Chinwah Direct Testimony at Page 3, ll. 10-12). As part of its certification requirements for local exchange and interexchange services, MTI must abide by the service quality and consumer protection rules set forth in the Commission's regulations and applicable orders. No party questions MTI's evidence or commitments concerning the applicable standards. Consequently, the Commission concludes that MTI has demonstrated that it will satisfy appropriate consumer protection and service quality standards. This finding is conditioned on MTI's continuing compliance with the commitments it made in its certification docket and in this proceeding.

Fourth, an ETC Applicant shall demonstrate that it offers a local usage plan comparable to the one offered by the ILEC in the service areas for which it seeks designation. The FCC has not adopted a specific local usage threshold. MTI offers several residential service packages that are comparable to certain AT&T calling plans. MTI emphasizes, with respect to comparability, that its local calling packages are offered to all who apply, regardless of past credit history, which leads to a very large churn and default rate. Consequently, its cost of doing business may be higher than an ILEC's. Therefore, the Commission finds that MTI's local usage and rate plans meet the comparable local usage and rate plan requirement.

Fifth, an ETC Applicant shall certify its acknowledgement that the FCC may require it to provide equal access to long distance carriers if no other ETC is doing so within the service area. ETC Order at Paragraph 35; 47 CFR §54.202(a)(5). The Commission finds that MTI meets the equal access requirement.

2. Additional FCC Certification and Reporting Requirements

In Paragraph 69 of its ETC Order, the FCC identified the following additional annual reporting and certification requirements for ETCs (some of which simply require annual certification of existing ETC performance requirements):

a) progress reports on the ETC's five-year service quality improvement plan, including maps detailing progress towards meeting its plan targets, an explanation of how much universal service support was received and how the support was used to improve signal quality, coverage, or capacity; and an explanation regarding any network improvement targets that have not been fulfilled. The information should be submitted at the wire center level;

b) detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect at least ten percent of the end users served in a designated service area, or that potentially affect a 911 special facility (as defined in subsection (e) of section 4.5 of the Outage Reporting Order). An outage is defined as a significant degradation in the ability of an end user to establish and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: 1) the date and time of onset of the outage; 2) a brief description of the outage and its resolution; 3) the particular services affected; 4) the geographic areas affected by the outage; 5) steps taken to prevent a similar situation in the future; and 6) the number of customers affected;

c) the number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

d) the number of complaints per 1,000 handsets or lines;

e) certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;

f) certification that the ETC is able to function in emergency situations;

g) the amount of USF funding received by MTI during the reporting period;

h) certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

i) certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

The FCC encouraged state commissions to adopt the foregoing reporting requirements and to apply them to all ETCs, not merely competitive ETCs. ETC Order, Paragraph 71. We will follow the FCC's recommendation, and we find that MTI has committed to complying with all of the applicable annual reporting requirements imposed on a recipient of low cost support. See Chinwah Testimony; Exhibit A. The Commission concludes that MTI must file reports with the ORS as set out in the parties' Stipulation.

3. The Public Interest Requirement

Section 214(e)(2) of the Federal Act requires a finding that additional ETC designations be in the public interest. In the instant case, MTI has demonstrated that its application for ETC designation is in the public interest, within the meaning of the ETC Order. MTI asserts that it is in a unique position to serve the public interest when providing USF assistance, because it is the carrier of last resort for many of its customers. Approximately 85% of MTI's customers have been disconnected by the incumbent carrier for lack of payment. Of those disconnected customers, many qualify for USF assistance. MTI states that end-users who have been disconnected by the incumbent often have nowhere else to go for phone service, and argues that these are the very people that the USF was meant to assist. No party contends that MTI does not meet the public interest test.

In the Commission's view, the designation of MTI as an ETC will increase customer choice for low income consumers eligible for Lifeline and Link-Up support in the areas requested. Customers who can obtain this telecommunications service will likely benefit from additional rate plan options and increased access to emergency services.

The Commission notes that MTI's specific voluntary commitment to comply with the guidelines in the ETC order – and specifically with the ORS' tailoring of those guidelines to fit both the Commission's existing rules and Orders and the particular circumstances of MTI's Application – is a critical component supporting a positive public interest finding. Thus, subject to the commitments and conditions discussed in this Order, the Commission concludes that MTI has shown that its designation as an additional ETC is in the public interest for its proposed ETC designated area.

C. Other Considerations

The Office of Regulatory Staff has requested that Midwestern be required to submit to annual recertification and to reapply to the Commission should it wish to expand the scope of its ETC designation. With regard to annual recertification, we hold that the annual recertification required by the FCC and the Universal Service Administrative Company (USAC) is adequate and that the Company should not be required to apply for additional recertification to this Commission on an annual basis. However, since Midwestern seeks to be designated only in non-rural exchanges of AT&T-South Carolina, expansion to rural high cost areas would require additional designation proceedings before this Commission.

IT IS THEREFORE ORDERED THAT:

1. MTI is designated as an ETC, as of the effective date of this order, in the requested areas served by AT&T-South Carolina.
2. MTI shall abide by its commitment to provide service throughout its ETC-designated service area to all customers making a reasonable request for service, including low-income customers.

3. All federal USF funding received as a result of this Order will be used for Lifeline and Link-Up support for low income customers.

4. Should the Commission determine that MTI has not honored its commitments and plans as set forth before the Commission, or has failed to follow the applicable statutes, rules or regulations, the Commission may deny MTI's annual recertification as an ETC.

5. The MTI-ORS Stipulation is approved.

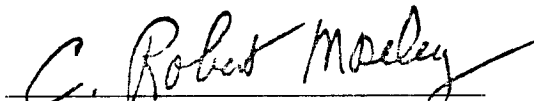
6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



G. O'Neal Hamilton, Chairman

ATTEST:



C. Robert Moseley, Vice Chairman

(SEAL)

TERMS OF STIPULATION BY MIDWESTERN TELECOMMUNICATIONS, INC.

RE: 2007-32-C

Midwestern is a certificated CLEC that offers local exchange service and meets the facilities requirements identified in 47 CFR 54.201(f) for universal service funding by leasing the physical components of the telecommunications network necessary to provide the nine services identified in 47 CFR 54.201(d)(1) through its Commercial Facilities Agreement with BellSouth. In addition, Midwestern agrees to advertise the availability of supported services using media of general distribution.

The federal USF consists of four programs, each administered by the Universal Service Administrative Company ("USAC"): 1) financial support to carriers serving high cost areas; 2) the E-rate program, which provides discounted services (local and long distance telephone service, Internet access, and internal connection) to eligible schools and libraries; 3) assistance to low income consumers (discounted installation and monthly telephone services); and 4) discounted service to rural health care providers.

Midwestern has requested ETC designation in the non-rural BellSouth service area. Additionally, Midwestern has limited its requested USF support to the federal USF low income support program. Midwestern certifies that all low income USF funding it receives will be used to subsidize rates for its Lifeline and Link-up customers, consistent with 47 CFR 54.403.

Midwestern agrees to include in its quarterly Service Quality Report the number and justification of applications held for more than 30 days and the number and justification of applications that were denied. Midwestern also agrees to report quarterly the percentage of consumers offered Lifeline via resale versus commercial agreements.

Midwestern agrees to utilize the same qualifying criteria for Lifeline and Link-up as is offered in the BellSouth territory (eligibility for TANF, Food Stamps, Medicaid and/or at or below 125% of poverty.)

Midwestern agrees to provide Lifeline customers an additional \$3.50 credit in order that the federal matching monies can be maximized. This will yield a Lifeline credit of \$13.50 per month which is consistent with the credit offered throughout BellSouth service area.

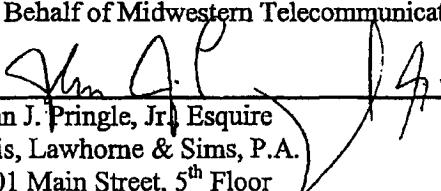
Midwestern agrees that it will abide by all advertising and reporting and verification requirements established by the FCC and Commission.

Should Midwestern seek designation as an ETC for high cost support, Midwestern will file an additional and separate application with the Commission that addresses all applicable state and federal laws, rules and regulations, including, but not limited to, an appropriate build-out plan that includes the use of its own facilities in addition to those obtained through commercial agreements.

Midwestern shall submit a two-year plan that describes the carrier's plans for advertising and outreach programs for identifying, qualifying and enrolling eligible participants in the Lifeline and Link Up programs.

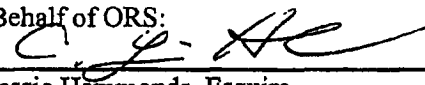
Midwestern shall comply will all applicable state and federal laws, rules, and regulations regarding ETC designation and reporting requirements.

On Behalf of Midwestern Telecommunications, Inc.:



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Columbia, South Carolina 29202

On Behalf of ORS:



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Counsel for ORS
1441 Main Street, Suite 300
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Dated: July 30, 2007

Wire Centers in Greenville and Charleston, S.C. in which Midwestern Telecom, Inc. Seeks ETC Designation

SC Wire Center (8-digit CLLI)	SC Deaveraged UNE Zone (1, 2 or 3)	Wire Center	State
CHTNSCDP	1	Chtn Deer Park	SC
CHTNSCDT	1	Chtn Dial & Tol	SC
CHTNSCJM	1	Chtn James Isla	SC
CHTNSCJN	1	Chtn Johns Isla	SC
CHTNSCLB	1	Chtn Lambs	SC
CHTNSCNO	1	Chtn North	SC
CHTNSCPS	1		
CHTNSCWA	1	Chtn West Ashle	SC
GNVLSCBE	1	Gnvl Berea	SC
GNVMSCBU	1		
GNVLSCCH	1	Gnvl Churchill	SC
GNVLSCCR	1	Gnvl Crestwood	SC
GNVLSCMC	1		
GNVLSCWP	1	Gnvl Ware Place	SC
GNVLSCWE	1	Gnvl West	SC
GNVLSCWR	1	Gnvl Woodruff R	SC
GNVLSCDT	1	Greenville D&T	SC